

MEMO

To: HOUSING METHODOLOGY COMMITTEE
ASSOCIATION OF BAY AREA GOVERNMENTS

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RE: DETERMINATION OF REGIONAL NEED - ALTERNATIVE METHOD

DT: SEPTEMBER 8, 2006

In 2004, AB 2158 revised the Housing Element Law and changed the process for the State's determination of the regional housing need. Two sections were added. The first, Govt. C. Section 65584.01, describes the process used in the past by the State. The second, Govt. C. Section 65584.02, articulates a new "alternative process."¹

Two acts can each trigger the alternative process:

- "at least one subregion has accepted delegated authority" for performing the regional housing need allocation process (RHNA), or
- "a council of governments [requests] the use of population and household forecast assumptions used in the regional transportation plan" in making the regional need determination.

The second trigger also provides that "[t]he council of governments may include a request to extend the housing element deadline . . . to a date not to exceed two years, for the purpose of coordination with the scheduled update of a regional transportation plan."

The Regional Transportation Plan (RTP) for the San Francisco Bay region is adopted by the Metropolitan Transportation Commission (MTC) as "a comprehensive blueprint for the development of mass transit, highway, airport, seaport, railroad, bicycle and pedestrian facilities." MTC adopted the current RTP in February 2005 and will update it in 2008. MTC uses ABAG's *Projections* forecasts of population and housing growth in developing the RTP. The 2008 update of the RTP will use population and household forecasts from *Projections 2007* which is scheduled for release in November 2006.

In 2005, ABAG triggered the alternative process by requesting that the Department of Housing and Community Development (HCD) extend the housing element deadline so ABAG could coordinate RHNA with the 2008 update of the RTP. When HCD granted the extension, it referenced the fact that the region was now under the alternative process.²

The following elements make up the alternative process:

- 1) ABAG and HCD compare the population and household assumptions used for *Projections 2007* with comparable population and household projections from the State's Department of Finance (DOF).

¹ The complete text of each section appears at the end of this memorandum.

² See page 2 of HCD extension letter to ABAG dated September 29, 2005.

- 2) ABAG and HCD consult on ABAG's data and the assumptions used for factors contributing to housing need beyond household growth identified in *Projections 2007* (including allowance for vacant or replacement units and other adjustment factors).
- 3) ABAG and HCD consult on a planning period not less than five years and not longer than six years.³
- 4) HCD may convene a panel to advise it during consultations.⁴
- 5) HCD may reject ABAG's request. In which case, "the determination for the region shall be made pursuant to Sections 65584 and 65584.01" - or the "traditional process."

The statute assumes that HCD and a council of governments would conduct the required consultations at the same time as the parties discuss the request for extension. When ABAG requested the extension in 2005, neither the *Projections* nor DOF population and household forecasts were available. Further, "data and assumptions for factors contributing to housing need beyond household growth identified in *Projections 2007*" had not been developed. Therefore, HCD and ABAG deferred the consultations required under the alternative process. ABAG expects the consultations will begin in early 2007 as soon as DOF forecasts are available for comparison with *Projections 2007*.

The second element of the alternative process appears open ended. However, the "traditional" process includes a list of the data assumptions and factors that, in the Legislature's view, influences the determination of housing need - household size, rates of household formation and vacancy rates in existing housing stock.⁵ ABAG expects that these factors will also be discussed under the alternative process.

In summary, the alternative process

- initially gives primacy to the regional assessment of population and household growth, and
- puts the onus on HCD to justify a reversion to the more prescriptive "traditional" process.

³ The statute also provides that the planning period be "not longer than the period of time covered by the regional transportation improvement plan." However, since MTC's RTP covers a 20-year planning period, this provision is moot since the balance of the statutory language limits the planning period to between 5 and 6 years.

⁴ The panel consists of "Demographic Research Unit of the DOF, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary."

⁵ See 65584.01(c)

Housing Element Law

Section 65584.01. Determination of existing and projected need for regional housing

- (a) For the fourth and subsequent revision of the housing element pursuant to Section 65588, the department, in consultation with each council of governments, where applicable, shall determine the existing and projected need for housing for each region in the following manner:
- (b) The department's determination shall be based upon population projections produced by the Department of Finance and regional population forecasts used in preparing regional transportation plans, in consultation with each council of governments. If the total regional population forecast for the planning period, developed by the council of governments and used for the preparation of the regional transportation plan, is within a range of 3 percent of the total regional population forecast for the planning period over the same time period by the Department of Finance, then the population forecast developed by the council of governments shall be the basis from which the department determines the existing and projected need for housing in the region. If the difference between the total population growth projected by the council of governments and the total population growth projected for the region by the Department of Finance is greater than 3 percent, then the department and the council of governments shall meet to discuss variances in methodology used for population projections and seek agreement on a population projection for the region to be used as a basis for determining the existing and projected housing need for the region. If no agreement is reached, then the population projection for the region shall be the population projection for the region prepared by the Department of Finance as may be modified by the department as a result of discussions with the council of governments.
- (c)
 - (1) At least 26 months prior to the scheduled revision pursuant to Section 65588 and prior to developing the existing and projected housing need for a region, the department shall meet and consult with the council of governments regarding the assumptions and methodology to be used by the department to determine the region's housing needs. The council of governments shall provide data assumptions from the council's projections, including, if available, the following data for the region:
 - (A) Anticipated household growth associated with projected population increases.
 - (B) Household size data and trends in household size.
 - (C) The rate of household formation, or headship rates, based on age, gender, ethnicity, or other established demographic measures.
 - (D) The vacancy rates in existing housing stock, and the vacancy rates for healthy housing market functioning and regional mobility, as well as housing replacement needs.
 - (E) Other characteristics of the composition of the projected population.
 - (2) The department may accept or reject the information provided by the council of governments or modify its own assumptions or methodology based on this information. After consultation with the council of governments, the department shall make determinations in writing on the assumptions for each of the factors listed in subparagraphs (A) to (E), inclusive, of paragraph (1) and the methodology it shall use and shall provide these determinations to the council of governments.

(d)

- (1) After consultation with the council of governments, the department shall make a determination of the region's existing and projected housing need based upon the assumptions and methodology determined pursuant to subdivision (c). Within 30 days following notice of the determination from the department, the council of governments may file an objection to the department's determination of the region's existing and projected housing need with the department.
- (2) The objection shall be based on and substantiate either of the following:
 - (A) The department failed to base its determination on the population projection for the region established pursuant to subdivision (b), and shall identify the population projection which the council of governments believes should instead be used for the determination and explain the basis for its rationale.
 - (B) The regional housing need determined by the department is not a reasonable application of the methodology and assumptions determined pursuant to subdivision (c). The objection shall include a proposed alternative determination of its regional housing need based upon the determinations made in subdivision (c), including analysis of why the proposed alternative would be a more reasonable application of the methodology and assumptions determined pursuant to subdivision (c).
- (3) If a council of governments files an objection pursuant to this subdivision and includes with the objection a proposed alternative determination of its regional housing need, it shall also include documentation of its basis for the alternative determination. Within 45 days of receiving an objection filed pursuant to this section, the department shall consider the objection and make a final written determination of the region's existing and projected housing need that includes an explanation of the information upon which the determination was made.

Section 65584.02. Alternative process for determining regional housing needs

- (a) For the fourth and subsequent revisions of the housing element pursuant to Section 65588, the existing and projected need for housing may be determined for each region by the department as follows, as an alternative to the process pursuant to Section 65584.01:
 - (1) In a region in which at least one subregion has accepted delegated authority pursuant to Section 65584.03, the region's housing need shall be determined at least 26 months prior to the housing element update deadline pursuant to Section 65588. In a region in which no subregion has accepted delegation pursuant to Section 65584.03, the region's housing need shall be determined at least 24 months prior to the housing element deadline.
 - (2) At least six months prior to the department's determination of regional housing need pursuant to paragraph (1), a council of governments may request the use of population and household forecast assumptions used in the regional transportation plan. For a housing element update due date pursuant to Section 65588 that is prior to January 2007, the department may approve a request that is submitted prior to December 31, 2004, notwithstanding the deadline in this paragraph. This request shall include all of the following:

- (A) Proposed data and assumptions for factors contributing to housing need beyond household growth identified in the forecast. These factors shall include allowance for vacant or replacement units, and may include other adjustment factors.
- (B) A proposed planning period that is not longer than the period of time covered by the regional transportation improvement plan or plans of the region pursuant to Section 14527, but a period not less than five years, and not longer than six years.
- (C) A comparison between the population and household assumptions used for the Regional Transportation Plan with population and household estimates and projections of the Department of Finance.

The council of governments may include a request to extend the housing element deadline pursuant to Section 65588 to a date not to exceed two years, for the purpose of coordination with the scheduled update of a regional transportation plan pursuant to federal law.

- (b) The department shall consult with the council of governments regarding requests submitted pursuant to paragraph (2) of subdivision (a). The department may seek advice and consult with the Demographic Research Unit of the Department of Finance, the State Department of Transportation, a representative of a contiguous council of governments, and any other party as deemed necessary. The department may request that the council of governments revise data, assumptions, or methodology to be used for the determination of regional housing need, or may reject the request submitted pursuant to paragraph (2) of subdivision (a). Subsequent to consultation with the council of governments, the department will respond in writing to requests submitted pursuant to paragraph (1) of subdivision (a).
- (c) If the council of governments does not submit a request pursuant to subdivision (a), or if the department rejects the request of the council of governments, the determination for the region shall be made pursuant to Sections 65584 and 65584.01.